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House Rules Changes Affecting Floor Procedures in the 109th Congress

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Summary

On the first day of the 109th Congress, the House agreed to H.Res. 5, which made several rules changes affecting floor proceedings. These modifications include allowing committees to adopt rules giving chairs the general authority to make the motion necessary to send a measure to conference; adding Wednesdays to the permissible days on which suspension motions may be entertained; eliminating the Corrections Calendar; amending the rules of decorum and debate regarding references to the Senate and its members; and granting the Speaker added authority to postpone votes on certain questions.

In order to prepare for a catastrophic event, the House created a procedure to determine a quorum in case a large number of Members are missing, incapacitated, or incapable of attending House proceedings. The House must hold two lengthy quorum calls and receive a report from the Sergeant-at-Arms before a quorum will be determined based on the “provisional number of the House.” Before consideration of H.Res. 5 began, a Member raised a point of order that the provisional quorum mechanism was unconstitutional. The Speaker does not rule on constitutional questions; instead, the House voted to consider the resolution, and in this way disposed of the constitutional question.

This report will be updated if the rules of the 109th Congress change.

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House Rules Changes Affecting Floor Procedures in the 109th Congress

On the first day of the 109th Congress, the House agreed to H.Res. 5, which made several rules changes affecting floor proceedings. Following a well-established practice, H.Res. 5 provided for the rules of the previous Congress to be the rules of the new Congress, but with a set of amendments. Five substantive changes to the standing rules of the House will affect the transaction of business on the floor in the 109th Congress. A sixth change created new procedures to determine a quorum in the House in the case of a catastrophic event.¹

Rules Changes Affecting Regular Floor Procedure

Motion to Send Bills to Conference. H.Res. 5 amends clause 2(a) of Rule XI to facilitate the process for sending a bill to conference committee. Under the new subparagraph, a committee can change its rules to grant its chair the general authority to make the motion necessary to send a bill to conference. Before the rules change, a committee could not grant the chair blanket authority to make the motion to go to conference for all measures reported by the committee. Instead, it was necessary for a committee, usually at the end of a mark-up when a measure was ordered reported, to move that the chair be authorized to offer such motions as may be necessary to secure a conference with the Senate on the specified measure.

In order to send a bill to conference, the House must agree either to a motion to disagree to Senate amendments and request (or agree to) a conference, or a motion to insist on House amendments and request (or agree to) a conference. House Rule XXII, clause 1, states that these motions are only privileged if offered by direction of the committee(s) of jurisdiction.² If a chair does not have this authority from the committee, then to go to conference the chair must secure either unanimous consent

¹ The resolution agreed to by the House, H.Res. 5, also changed the rules affecting the House committee system. These changes, including the creation of a permanent Committee on Homeland Security, are identified in CRS Report RS22018, *Committee System Rules Changes in the House, 109th Congress*, by Judy Schneider. Changes affecting the congressional budget process are discussed in CRS Report RS22021, *House Rules Changes Affecting the Congressional Budget Process in the 109th Congress (H. Res. 5)*, by Bill Heniff Jr. Changes to the rules of conduct and the procedures of the Committee on Standards of Official Conduct are described in CRS Report RS22034, *House Ethics Rules Changes for the 109th Congress*, by Mildred Amer. The resolution also made technical and grammatical changes to the House rules that are not described in this report.

² The motion is privileged at the discretion of the Speaker if offered “by direction of the primary committee and of all reporting committees that had initial referral of the proposition” (House Rule XXII, clause 1).

on the House floor or the House must adopt a special rule reported by the Committee on Rules.

Suspension of the Rules on Wednesdays. H.Res. 5 amended House Rule XV, clause 1(a) to allow the Speaker to entertain motions to suspend the rules on Wednesdays.³ Previously, House rules only granted this authority to the Speaker on Mondays and Tuesdays.⁴ This change codified the increasingly common practice of adding certain Wednesdays as suspension days. In the 108th and several preceding Congresses, Wednesday was added as a suspension day on an ad hoc basis by unanimous consent, special rule, or standing order.⁵

Entertaining motions to suspend the rules on Wednesdays has helped the House to better manage the growing number of measures considered under suspension procedures. In the 108th Congress 924 measures were brought up under suspension, compared to 685 measures brought up under suspension in the 107th Congress.⁶ Furthermore, in recent Congresses fewer motions to suspend the rules have been entertained on Mondays. This practice may reflect broader trends in how the House schedules legislative business.⁷

Repeal of the Corrections Calendar. H.Res. 5 amended the House rules in several places to remove all mention of the “Corrections Calendar,” a procedural device created in the 104th Congress to expedite the consideration of legislation that corrected, or eliminated, ambiguous laws and regulations.

Under the former procedures that were described in clause 6 of Rule XV, the Speaker could place measures reported by committees on the Corrections Calendar. The measures could be called up for consideration on the second and fourth Tuesdays of each month. Debate on bills called from the Corrections Calendar was limited to

³ For more information on suspension of the rules, see CRS Report RL32474, *Suspension of the Rules in the House of Representatives*, by Thomas P. Carr.

⁴ According to the rule, the Speaker may also entertain motions to suspend the rules during the last six days of a session. In contemporary practice, however, it is difficult to know when the last six days of a session begin. Adjournment resolutions usually are not approved until very shortly before the adjournment takes place. The House sometimes agrees to special rules near the end of a session that make motions to suspend the rules privileged for the remainder of the session.

⁵ At the start of the 108th Congress, the House agreed to a standing order that allowed the Speaker to entertain motions to suspend the rules on Wednesdays through Apr. 9, 2003. On Apr. 30, 2003, the House agreed, by unanimous consent, to continue to grant this authority to the Speaker through June 25, 2003 (*Congressional Record*, daily edition, Apr. 30, 2003, p. H3532). On June 26, 2003, the House agreed to a resolution (H.Res. 297) stating that the Speaker could entertain motions to suspend the rules on Wednesdays for the remainder of the 108th Congress.

⁶ CRS Report 97-901, *Suspension of the Rules in the House: Measure Sponsorship by Party*, by Thomas P. Carr.

⁷ For more information on the House schedule, see CRS Report RL30825, *House Schedule: Recent Practices and Proposed Options*, by Richard S. Beth.

one hour.⁸ The only amendments in order were those authorized by the primary committee of jurisdiction or those offered by the chair or a designee. One motion to recommit with or without amendatory instructions was also in order. Passage of measures called from the Corrections Calendar required a three-fifths vote.

The procedure was used with some frequency during the 104th Congress, but its use declined markedly in succeeding Congresses. Twenty-one bills were considered from the Corrections Calendar in the 104th Congress, but in the three subsequent Congresses (105th-107th) a total of eight bills were considered using the procedure. No bills were considered from the Corrections Calendar in the 108th Congress. House leaders concluded that the purpose of the Corrections Calendar could be more easily achieved through the use of other procedures for the consideration of legislation such as unanimous consent or suspension of the rules.⁹

Reference to the Senate in Debate. H.Res. 5 amends Rule XVII, clause (1)(b) to allow references to the Senate and Senators during debate, while directing Members, as always, to keep remarks relevant to the subject under debate and to avoid “personality.” H.Res. 5 strikes the paragraphs in the rule that described the kinds of Senate references that were previously allowed. According to House leaders, the change will expand the permissible references to the Senate but still maintain the “traditions of dignity and decorum in proceedings.”¹⁰ The Speaker will continue to call Members to order who violate this House rule.

For almost 200 years, the House strictly interpreted British parliamentary custom and did not allow Members of the House to refer in debate to Senate actions or Senators, or to the Senate at all except in a general, neutral, and factual way.¹¹ One reason behind the prohibition was the principle that two chambers of a bicameral legislature should make decisions independently of each other, without referring to arguments made in the other body. The other reason was that the prohibition would minimize disputes or misunderstandings between the chambers.¹²

In the late 1980s, the House loosened the prohibition against references to the Senate that had been established by precedent.¹³ A 1987 amendment to House rules

⁸ Under the rule, the previous question was ordered automatically on the bill and any amendments after one hour of debate.

⁹ *Congressional Record*, daily edition, Jan. 4, 2005, p. H13.

¹⁰ *Congressional Record*, daily edition, Jan. 4, 2005, p. H13.

¹¹ Lewis Deschler and Wm. Holmes Brown, *Deschler-Brown Precedents of the U.S. House of Representatives*, H. Doc. 94-661, 94th Cong., 2nd sess., (Washington: GPO, n.d., covering precedents through the 104th Congress), vol. 13, ch. 29, sec. 44, pp. 127-9 (hereafter cited as *Deschler-Brown Precedents*); *House Manual*, sec. 371, p. 189.

¹² U.S. Congress, House, *Constitution, Jefferson’s Manual, and Rules of the House of Representatives of the United States, One Hundred Eighth Congress*, H.Doc. 107-284, 107th Cong., 2nd sess., [compiled by] Charles W. Johnson, Parliamentarian (Washington: GPO, 2003), sec. 371, p. 186 (hereafter cited as *House Manual*).

¹³ *Congressional Record*, daily edition, Jan. 6, 1987, pp. H6-H7; *Congressional Record*, (continued...)

allowed Members to refer to Senate actions if they were a matter of public record and to refer to the sponsorship or status of bills, resolutions, and amendments in the Senate. In 1989, the House further expanded permissible references to allow Members to provide factual descriptions of Senate action or inaction on a measure before the House, and to quote Senate proceedings relevant to the creation of a legislative history establishing the meaning of a measure before the House. House rules, however, still prohibited characterizations of Senate action or inaction and references to individual Senators. Quotations from Senate proceedings that would not be relevant to the legislative history of a measure then under debate were also prohibited.

Authority to Postpone and Cluster Votes. Since 1979, House rules have granted the Speaker the authority to postpone certain electronic votes. Clause 8 of Rule XX allows the Speaker to schedule votes on some questions at a convenient time within the next two legislative days. Postponing votes on questions so that a series of electronic votes can be taken back-to-back is generally considered to be convenient for all Members. The rule, furthermore, allows the Speaker to shorten the length of electronic votes. If several votes are postponed, then after the first vote is held open for the minimum 15 minutes required by House rules, the Speaker can reduce the time for all subsequent votes to 5 minutes each.

Since the adoption of the original rule allowing the Speaker to postpone certain votes, the House has amended the rule several times to include votes on additional questions.¹⁴ This most recent revision adds three questions to the list of questions that can be postponed: agreeing to a motion to reconsider; agreeing to a motion to lay on the table a motion to reconsider; and agreeing to an amendment reported from the Committee of the Whole.

The three questions added to the list of votes that can be postponed are rarely settled by recorded vote, and therefore the Speaker will have few opportunities to postpone them. One motion to reconsider the vote on final passage of the bill, and in fact on most questions decided in the House, can be made by a Member on the

¹³ (...continued)
daily edition, Jan. 3, 1989, p. H7.

¹⁴ The original rule included only the question of passing bills or resolutions or agreeing to conference reports. In the 97th Congress, the House added the question of agreeing to a motion to suspend the rules and on ordering the previous question on special rules. In the 98th Congress, the rule was changed to allow the Speaker to schedule a vote on the question of agreeing to the Speaker's approval of the Journal later in the legislative day. In the 101st Congress, the question of agreeing to a motion to instruct House conferees if they failed to report was added, and in the 106th Congress the House added the question of agreeing to an initial motion to instruct conferees. In the 104th Congress, the House expanded the list to include a vote ordering the previous question on all the questions that are susceptible of postponement. *House Manual*, sec. 1030, p. 808.

prevailing side of the question.¹⁵ The motion is rarely made; instead it is routinely laid on the table without objection.

The House also does not often vote electronically on amendments reported from the Committee of the Whole. Most major measures are considered in the Committee of the Whole, and most amendments are offered, debated, and voted on in the Committee of the Whole.¹⁶ Since the Committee of the Whole is technically a committee of the House, any amendments that are agreed to are reported to the full House, and, since only the House has the authority to actually amend the bill, the amendments must be voted on again. Generally, all amendments agreed to in the Committee of the Whole are agreed to, *en bloc*, by voice vote after the Committee of the Whole reports to the House. A Member could, however, demand a separate vote on any amendment. Voting a second time on all the amendments could potentially be time-consuming. The rules change will allow the Speaker to schedule electronic votes on these amendments, if demanded, at a later time in the legislative schedule.

Quorum in the Case of Catastrophic Circumstances

Article I, Section 5, clause 1 of the Constitution states that “a Majority of each [House] shall constitute a Quorum to do Business.” A quorum has long been defined as a majority of the whole number of the House, and the whole number of the House has long been viewed as the number of Members elected, sworn, and living. Whenever the death, resignation, disqualification, or expulsion of a Member results in a vacancy, the whole number of the House is adjusted.¹⁷

In the event of a catastrophe, however, it may not be immediately known whether a Member is alive or dead, thereby making it impossible to adjust the whole number of Members. Furthermore, if a Member is incapacitated but living, or unharmed but unable to attend the proceedings of the House, he or she would still count toward the whole number used to determine a quorum. Missing, injured, and stranded Members are still “elected, sworn, and living.” If many such Members are affected, and the Congress needs to act, this situation could prove problematic because it may be impossible to establish a quorum.

¹⁵ House Rule XIX, clause 3, provides the opportunity to offer the motion to reconsider. The motion can only be made in the House, not in the Committee of the Whole. Furthermore, it is only in order the same day as the vote or on the day after the vote. For more information, see *House Manual*, sec. 1003, pp. 783-788 and CRS Report RL32207, *Commonly Used Motions and Requests in the House of Representatives*, by Betsy Palmer.

¹⁶ For more information on the amending process in the House of Representatives, including a discussion of the process after the Committee of the Whole rises and reports, see CRS Report 98-995, *The Amending Process in the House of Representatives*, by Christopher M. Davis and Stanley Bach.

¹⁷ This long-standing practice was codified in House Rule XX, clause 5(c) in the 108th Congress. H.Res. 5 of the 109th Congress also amended the rules to include the long-standing definition of whole number of the House: “the number of Representatives, chosen, sworn, and living whose membership in the House has not been terminated by resignation or action of the House.”

In order to address this issue, the House modified clause 5 of Rule XX to prepare for a catastrophic event that leaves a large number of Members missing, incapacitated, or incapable of attending the proceedings of the House. The addition to the rule establishes a method for establishing a “provisional quorum” in the case of a catastrophic event. This new method does not provide a new means for determining the whole number of the House; on the contrary, it is a method to be used provisionally until a quorum can be constituted by a majority of the whole number of the House. Under the new rule, if the House is without a quorum due to catastrophic circumstance, then a quorum shall be a majority of the “provisional number” of the House.

Steps Required to Establish the House Is Without a Quorum Due to Catastrophic Circumstance. The rule requires four steps to be taken in order, and without intervening adjournment, to establish that the House is without a quorum due to catastrophic circumstances. Only after the steps described below are taken will a quorum be determined based on the provisional number of the House. A majority of Members present may terminate the proceedings by adopting the motion to adjourn.

First, dispose of a motion to compel the attendance of absent Members. If the absence of a quorum is demonstrated,¹⁸ then under a House rule dating back to 1789 a Member can make a motion to compel the attendance of absent Members. This motion, described in House Rule XX clause 5(a), must first be disposed of, either favorably or unfavorably, before any other steps are taken to establish that the House is without a quorum due to catastrophic circumstances.¹⁹

The motion to compel the attendance of absent Members requires a majority vote for adoption, and that majority must comprise at least 15 Members.²⁰ If the motion is adopted, then the call of the House occurs through Members presenting themselves, perhaps after receiving notification from the Sergeant-at-Arms, and having their presence recorded by the Clerk.²¹ If the motion is not adopted, either because it failed to garner support from a majority of Members present, or because the majority supporting it is fewer than 15 Members, then the motion is still

¹⁸ The failure of the House to comply with the constitutional quorum requirement is demonstrated if a majority of the whole number of the House does not respond to a quorum call or a call of the House or do not participate in a record vote. For more information see CRS Report 98-988, *Voting and Quorum Procedures in the House of Representatives*, by Stanley Bach.

¹⁹ “Section-by-Section Summary of H. Res. 5, Adopting House Rules for the 109th Congress,” *Congressional Record*, daily edition, Jan. 4, 2005, p. H13.

²⁰ This motion is in order even if the absence of a quorum has been demonstrated. Article I, Section 5, clause 1 of the Constitution states that, in the absence of a quorum, “a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.”

²¹ Under the modern practice, the call to compel attendance of absent Members rarely occurs, but for an example of proceedings see *Congressional Record*, daily edition, Nov. 2, 1987, p. H9459.

considered “disposed of” and the other steps necessary to establish that the House is without a quorum due to catastrophic circumstances can occur.

Second, conduct a 72-hour call of the House that does not produce a quorum. After disposing of the motion to compel the attendance of absent Members, the House must have a call (or series of calls) of the House over a period of 72 hours, excluding time spent in recess.²² The call could be the one that was ordered by adoption of the motion to compel the attendance of absent Members. The Speaker²³ could also entertain a motion for a call of the House under clause 7(b) of Rule XX. However ordered, if the call failed to produce a quorum based on the existing whole number of the House after 72 hours, then the call could be closed and additional steps to establish that the House is without a quorum due to catastrophic circumstances could be taken.

Third, the Speaker must receive a “catastrophic quorum failure report” and announce its contents to the House. After the call of the House is closed, the Speaker, with the Majority and Minority Leader, can then receive from the Sergeant-at-Arms (or his designee) a “catastrophic quorum failure report” that states the House cannot establish a quorum because of catastrophic circumstances such as an attack or a natural disaster. According to the rule, a catastrophic quorum failure report must contain:

- the number of known vacancies;
- a list of former Representatives whose seats are vacant (this list would include any known dead Representatives, as well as any Representatives who resigned or who were removed by action of the House if their seats had not yet been filled;
- a list of Representatives considered incapacitated;
- a list of Representatives not incapacitated but still incapable of attending the proceedings of the House; and
- a list of Representatives not accounted for.

The Sergeant-at-Arms is directed by the new rule to prepare the report in consultation with the Attending Physician to the Congress (or his designee), the Clerk of the House (or his designee), and public health and law enforcement officials. The Speaker, after consultation with the two party leaders, is required to announce the content of the report to the House. This announcement is not subject to appeal.

²² Under some conditions, House rules grant the Speaker the authority to declare a recess. Clause 12(b) of Rule I states: “To suspend the business of the House when notified of an imminent threat to its safety, the Speaker may declare an emergency recess subject to the call of the Chair.” Clause 12 (a) also authorizes the Speaker to declare a recess when no question is pending before the House.

²³ In catastrophic circumstances, the person exercising the authorities of the Office of Speaker might not be an elected Speaker or Speaker pro tempore. He or she might be a Speaker pro tempore appointed under clause 8(a) or clause 8(b)(1) of Rule I or acting under clause 8(b)(3) of Rule I.

Fourth, conduct a 24-hour call of the House that does not produce a quorum. Even after the Speaker’s announcement, the House is not considered to be without a quorum due to catastrophic circumstances until the completion of a second extended call of the House. This call of the House can be ordered under the procedures described in clause 5(a) of Rule XX or by a motion for the call under clause 7(b). This second call of the House, or series of calls, could be closed after 24 hours, excluding the time spent in recess, if it did not produce a majority of the whole number of the House.

The Provisional Number of the House. If all four of these steps are completed, then the House has established that it is without a quorum due to catastrophic circumstances. A quorum for conducting business can then be determined based on the “provisional number of the House.” The number of Members who respond to the 24-hour call of the House will be the provisional number of the House, and a majority of the provisional number will constitute a quorum for doing business. If Members arrive after the call of the House, the provisional number is increased accordingly. If any Member counted under the 24-hour call of the House to determine the provisional number later ceases to be a Representative, due to death, resignation, or action by the House, then the provisional number of the House would also be reduced accordingly.²⁴

The catastrophic quorum failure report must be updated each legislative day; in other words, it must be updated each time the House reconvenes after an adjournment. The Speaker is required to make these updates available to the House. If at any time a sufficient number of Members arrive to constitute a quorum of the whole number of the House, then the provisional number would no longer be in effect.

Constitutionality of the Provisional Quorum. Some Members expressed concern that the catastrophic quorum rule was unconstitutional. When H.Res. 5 was called up for consideration, a Representative made a constitutional point of order. The Speaker declined to entertain the constitutional point of order, citing numerous earlier precedents barring the Speaker from ruling on the constitutionality of a pending proposal.²⁵ Instead, typically, the House determines for itself the constitutionality of a proposition either by voting to consider it or voting to adopt it. The Representative then raised the question of consideration, and the House by a vote of 224-192 agreed to consider H.Res. 5 and the provisions in it dealing with the new quorum procedure. Thereafter, H.Res. 5 was agreed to by a vote of 220-195. Whether an attempt will be made to challenge in court the constitutionality of the rule

²⁴ According to the new rule, if the House is conducting business with a provisional quorum, then it cannot expel a Representative who is not incapacitated but is otherwise incapable of attending the proceedings of the House (Rule XX, clause 5(c)(6)).

²⁵ *Congressional Record*, daily edition, Jan. 4, 2005, p. H10. The Speaker cited the numerous precedents in *House Manual*, sec. 628, p. 341, and specifically Asher C. Hinds, *Hinds’ Precedents of the House of Representatives of the United States* (Washington: GPO, 1907), vol. II, sec. 1255, pp. 805-807 and secs. 1318-1320, pp. 873-874.

is not yet certain. Neither is it certain that a Member has legal standing to bring such a suit without the new quorum rule ever having been implemented.²⁶

²⁶ For more information on the issue of a catastrophic loss of Members of Congress, see CRS Report RL31394, *House Vacancies: Selected Proposals for Filling Them After a Catastrophic Loss of Members*, by Sula P. Richardson and Paul S. Rundquist, and CRS Report RL32031, *House Vacancies: Proposed Constitutional Amendments for Filling Them Due to National Emergencies*, by Sula P. Richardson and Paul S. Rundquist.